APPENDIX I.

(*See* Notes 1 and 2 to Rule 33.)

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49. The following penalties may, for good and sufficient reason and as hereinafter provided, be imposed upon members of the services comprised in any of the classes (1) to (5)† specified in Rule 14, namely:—

(*i*) Censure.

(*ii*) Withholding of increments or promotion, including stoppage at an efficiency bar.

(*iii*) Reduction to a lower post or time-scale, or to a lower stage in a time-scale.

(*iv*) Recovery from pay of the whole or part of any pecuniary loss caused to Government by negligence or breach of orders.

(*v*) Suspension.

(*vi*) Removal from the civil service of the Crown, which does not disqualify from future employment.

(*vii*) Dismissal from the civil service of the Crown, which ordinarily disqualifies from future employment.

Explanation.—The discharge—

(*a*) of a person appointed on probation, during the period of probation,

(*b*) of a person appointed otherwise than under contract to hold a temporary appointment, on the expiration of the period of the appointment,

(*c*) of a person engaged under contract, in accordance with the terms of his contract,

does not amount to removal of or dismissal within the meaning of this rule.

[*Government of India's decision.*]

In a case where it was ordered that an officer should not be allowed to officiate again in a selection post until he had earned at least two really good reports in his substantive appointment, the question arose whether the order amounted to the infliction of any of the penalties mentioned in Rule 49 or whether it amounted merely to non-selection for a selection post. .....

It has been observed by the Government of India that the distinction between censure, the withholding of promotion and non-selection for a selection post is of considerable importance. Both censure and withholding of promotion are

† The classes (1) to (5) specified in Rule 14 of the Civil Services (Classification, Control and Appeal) Rules are (1) All-India Services, (2) Central Services, Class I, (3) Central Services, Class II, (4) Provincial Services and (5) Socialist Services.

[ ] Inserted by Correction Slip No. 22, dated 25th October 1937.

appealable under Rule 56. On the other hand, non-selection for a selection post is not appealable.

If an officer, because of an unsatisfactory record and unfavourable confidential reports, is not selected for a selection post and some other officer junior to him is selected in preference, this does not amount to the withholding of promotion. If any enquiry is held against an officer and an order of censure is passed on him, it is open to him to appeal; if he does not appeal or his appeal is rejected, and if subsequently because of the existence of this censure in his record he is not selected for a selection post and some other officer junior to him is selected in preference, this also does not amount to the withholding of promotion. If, however, an enquiry is held against an officer and an order is passed that he should not be promoted to a selection post for a definite period or until he has obtained good reports, this order would amount to the infliction of the penalty of withholding promotion. This distinction between non-selection for a selection post and the withholding of promotion may be summed up as being that in the former case the officer in question is considered for selection but some other officer is preferred on his merits, while in the latter case the officer in question has been declared beforehand, as a disciplinary measures, to be ineligible for selection irrespective of the merits of the other officers available.

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52. Subject to the provisions of these rules, the Governor-General in Council or the Local Government of a Governor's Province may impose—

(*a*) any of the penalties specified in clauses (*i*) to (*v*) of Rule 49 on any person included in any of the clauses (1) to (5)† specified in Rule 14 who is serving under the administrative control of the Governor-General in Council or the Local Government, as the case may be,

(*b*) the penalty specified in clause (*vi*) or in clause (*vii*) on any such person not being one of those referred to in Rule 56.

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55. Without prejudice to the provisions of the Public Servants Inquiries Act, 1850, no order of dismissal, removal or reduction shall be passed on a member of a Service (other than an order based on facts which led to his conviction in a criminal court) unless he has been informed in writing of the grounds on which it is proposed to take action, and has been afforded an adequate opportunity of defending himself. The grounds on which it is proposed to take action shall be reduced to the form of a definite charge or charges, which shall be communicated to the person charged together with a statement of the allegations on which each charge is based and of any other circumstances which it is proposed to take into consideration in passing orders on the case. He shall be required, within a reasonable time, to put in a written statement of his defence and to state whether he desires to be heard in person. If he so desires or if the authority concerned so direct, an oral inquiry shall be held. At that inquiry oral evidence shall be heard as to such of the allegations as are not admitted, and the person charged shall be entitled to cross-examine the witnesses, to give evidence in person and to have such witnesses called, as he may wish, provided that the officer conducting the

†The classes (1) to (5) specified in Rule 14 of the Civil Services Classification Control and Appeal Rules are (1) All-India Services, (2) Central Services, Class I, (3) Central Services, Class II, (4) Provincial Services and (5) Specialist Services.

inquiry may, for special and sufficient reason to be recorded in writing refuse to call a witness. The proceedings shall contain a sufficient record of the evidence and a statement of the findings and the grounds thereof.

This rule shall not apply where the person concerned has absconded, or where it is for other reasons impracticable to communicate with him. All or any of the provisions of the rule may, in exceptional cases, for special and sufficient reasons to be recorded in writing, be waived, where there is a difficulty in observing exactly the requirements of the rule and those requirements can be waived without injustice to the person charged.

Part XIII—Appeals.

56. Every person included in one of the classes (1) to (5) specified in Rule 14 shall be entitled to appeal, as hereinafter provided, from an order passed by an authority in India—

(*a*) imposing upon him any of the penalties specified in Rule 49;

(*b*) discharging him in accordance with the terms of his contract if—

(*i*) he has been engaged on contract for a fixed or for an indefinite period and has rendered under either form of contract continuous service for a period exceeding five years at the time when his services are terminated; or

(*ii*) he comes under the provision of Rule 58 (3) :

Provided that a person appointed by the Governor-General in Council shall have no right of appeal from order passed by the Governor-General in Council.

57. * * * * * * *

(5) A member of a provincial Service, or a member of a Specialist Service under the administrative control of the Local Government of a Governor's Province, may appeal to the Governor from an order passed by the Local Government:

Provided that any such person who was appointed by the Secretary of State in Council shall be entitled as an alternative to the appeal to the Governor to appeal to the Governor-General in Council, and, if his pay as defined in the Fundamental Rules is not less than Rs. 500 per mensem, thereafter to the Secretary of State in Council.

58. (1) Every member of a service other than a subordinate service shall be entitled to appeal to the authority hereinafter specified against any order passed by an authority to the said authority which—

(*a*) alters to his disadvantage his conditions of service, pay, allowances or pension as regulated in rules or in a contract of service or

(*b*) interprets to his disadvantage the provisions of any rules or contract of service whereby his conditions of service, pay, allowances or pension are regulated.

(2) The authority hereinbefore referred to shall be the authority which made the rule to which the order under appeal relates, or in the case of an

appeal relating to a contract of service, the authority which appointed the appellant: Provided that where the rule or the appointment was made by the Local Government of a Governor's Province the appeal shall lie to the Governor.

(3) Every person appointed by the Secretary of State in Council shall be entitled to appeal to the Secretary of State in Council against an order of any subordinate authority terminating his employment or giving notice of such termination otherwise than on his reaching the age of superannuation.

59. In the case of an appeal against an order imposing any penalty specified in Rule 49, the appellate authority shall consider—

(*a*) whether the facts on which the order was based have been established;

(*b*) whether the facts established afford sufficient ground for taking action; and

(*c*) whether the penalty is excessive, adequate or inadequate; and after such consideration shall pass such order as it thinks proper.

60. In the case of an appeal against an order under Rule 58, the appellate authority shall pass such order as appears to it just and equitable, having regard to all the circumstances of the case.

61. An authority from whose order an appeal is preferred under these rules shall give effect to any order made by the appellate authority.

62. Every person preferring an appeal shall do so separately and in his own name.

63. Every appeal preferred under these rules shall contain all material statements and arguments relied on by the appellant, shall contain no disrespectful or improper language and shall be complete in itself. Every such appeal shall be submitted through the head of the office to which the appellant belongs or belonged and through the authority from whose order the appeal is preferred.

64. An appeal may be withheld by a Local Government or the Governor-General in Council if—

(1) it is an appeal in a case in which under these rules no appeal lies, or

(2) it does not comply with the provisions of Rule 63, or

(3) it is not preferred within six months after the date on which the appellant was informed of the order appealed against, and no reasonable cause is shown for the delay, or

(4) it is a repetition of a previous appeal and is made to the same appellate authority by which such appeal has been decided, and no new facts or circumstances are adduced which afford grounds for a reconsideration of the case:

[(5) It is addressed to an authority to which no appeal lies under these rules,

(This amendment takes effect from the 1st September 1936.)]

[ ] Inserted by Correction Slip No. 21, dated 25th October 1937.

Provided that in every case in which an appeal is withheld the appellant shall be informed of the fact and the reasons for it:

Provided also that an appeal withheld on account only of failure to comply with the provisions of Rule 63 may be resubmitted at any time within one month of the date on which the appellant has been informed of the withholding of the appeal, and, if resubmitted in a form which complies with those provisions, shall not be withheld.

65. No appeal shall lie against the withholding of an appeal by a competent authority.

66. Every appeal from a person serving under a Local Government to the Governor-General in Council or the Secretary of State in Council which is not withheld under these rules shall be forwarded by the Local Government to the Governor-General in Council with an expression of opinion. Every appeal to the Secretary of State in Council which is received by the Governor-General in Council from a Local Government or from the head of a department under the Governor-General in Council and which is not similarly withheld shall be transmitted by the Governor-General in Council with an expression of his opinion:

Provided that appeals to the Secretary of State in Council presented through the Local Government of Madras, or of Bombay or of Bengal, which are not withheld under these rules, shall be forwarded direct to the Secretary of State in Council by the Local Government unless the appeal relates to a case which has previously been under the consideration of the Governor-General in Council, in which case it shall be forwarded to the Governor-General in Council.

67. The Local Government shall forward quarterly to the Governor-General in Council a list of appeals to the Governor-General in Council or the Secretary of State in Council which have been withheld by the Local Government together with the reasons for withholding the same.

The Governor-General in Council shall in the same manner forward quarterly to the Secretary of State a list of appeals to the Secretary of State in Council which have been withheld by a Local Government or by the Governor-General in Council.

68. The Secretary of State in Council may call for any appeal withheld by a Local Government or the Governor-General in Council which under these rules may be made to him, and may pass such orders thereon as he considers fit; and the Governor-General in Council may call for an appeal withheld by a Local Government which under these rules may be made to him and may pass such orders thereon as he considers fit.

69. Nothing in these rules shall operate to deprive any person of any right of appeal, which he would have had if these rules had not been made, in respect of any order passed before they came into force. An appeal pending at the time when, or preferred after, these rules came into force shall be deemed to be an appeal under these rules, and Rules 59 and 60 (as the case may be) and 61 shall apply as if the appeal were against an order appealable under these rules.

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